

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

**SUNDEE WILHITE BOLTON AND
TOMMY RAY BOLTON**

*** CIVIL ACTION NO.**

VERSUS

*** JUDGE:**

**WENDELTA PROPERTY HOLDINGS
LLC, LIBERTY MUTUAL INSURANCE
COMPANY**

*** MAGISTRATE:**

*** * * * ***

**NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C.
§ 1441(b) (DIVERSITY JURISDICTION)**

TO THE CLERK OF COURT:

PLEASE TAKE NOTICE that Defendants, Wendelta Property Holdings LLC and Liberty Mutual Insurance Company, with full reservation of any and all rights, defenses, and objections, hereby give notice of the removal to this Court of the State Court Action described below and, in support, state as follows:

BACKGROUND

1.

Wendelta Property Holdings LLC (“Wendelta”) and Liberty Mutual Insurance Company (“Liberty”) were named as defendants in a civil action commenced on April 2, 2019 in the Fourth Judicial District Court for the Parish of Ouachita, State of Louisiana, entitled “*Sundee Wilhite Bolton and Tommy Ray Bolton versus Wendelta Property Holdings, LLC; and Liberty Mutual Insurance Company*”, bearing docket number Civil Action No. 19-1127.

2.

Defendants file herewith a copy of Plaintiffs' Petition, attached as Exhibit "A". A copy of the entire State Court record has been requested and will be submitted to the Court upon receipt.

3.

Plaintiffs claim that on or about May 16, 2018, they were leaving the Wendy's restaurant located at 109 Thomas Road in West Monroe, Louisiana after purchasing food when Sundee Wilhite Bolton slipped in a puddle of water and fell, resulting in severe personal injuries. Petition, ¶¶ 4–5.

4.

Plaintiffs assert that an employee informed them that the floor was wet due to dripping condensation from an overhead vent, which had been reported to management "long before th[e] incident, but had not yet been repaired." Petition, ¶ 7.

5.

Plaintiffs maintain that there were "no cones or signs or warnings of any type to alert customers that there was water on the floor" and Sundee Wilhite Bolton "had no warning of the hazardous condition ... and no chance to avoid it." Petition, ¶¶ 8–9.

6.

Plaintiffs contend that Wendelta's employees failed maintain or repair the dripping vent and failed to warn of the hazardous condition created thereby, and that Liberty insured Wendelta against personal injuries arising from negligence or fault. Petition, ¶¶ 10–11.

7.

Sundee Wilhite Bolton seeks to recover for past and future medical expenses; physical pain and suffering; mental anguish; disability; economic losses, including lost income, earning capacity, and household services; and loss of enjoyment of life. Petition, ¶¶ 12–14.

8.

Tommy Ray Bolton seeks to recover for past and future medical expenses; physical pain and suffering; mental anguish; disability; economic losses, including lost income, earning capacity, and household services; and loss of enjoyment of life. Petition, ¶ 15.

DIVERSITY OF CITIZENSHIP

9.

Pursuant to 28 U.S.C. § 1332, this Court has jurisdiction over this matter based upon diversity of citizenship.

10.

As pleaded, Plaintiffs, Sundee Wilhite Bolton and Tommy Ray Bolton, are and were citizens of Louisiana, both at the time of filing of this suit and at the time of removal. *See* Petition, ¶ 1.

11.

Defendant, Wendelta Property Holdings LLC, is and was a limited liability company whose sole member is and was Carlisle LLC, both at the time of filing of this suit and at the time of removal. Carlisle LLC's members are and were Chancellor G. Carlisle, an individual who is and was a citizen of Tennessee, and The Gene D. Carlisle Family Trust, of which Chancellor G. Carlisle is and was the trustee, both at the time of filing of this suit and at the time of removal. Accordingly, Wendelta Property Holdings LLC was a citizen of Tennessee, both at the time of the filing of this suit and at the time of removal. *See Americold Realty Trust v. Conagra Foods, Inc.*, 136 S.Ct. 1012, 1016 (2016); *see also Louisiana ex rel. Tureau v. BEPCO, L.P.*, 2017 WL 2676792, at * 1–2 (W.D. La. Jun. 21, 2017) (citations omitted).

12.

Defendant, Liberty Mutual Insurance Company, is and was a Massachusetts corporation with its principal place of business in Massachusetts, both at the time of the filing of this suit and at the time of removal. 28 U.S.C. § 1332(c)(1).

AMOUNT IN CONTROVERSY

13.

The \$75,000.00 amount-in-controversy requirement of 28 U.S.C. § 1332 is satisfied in this case. According to 28 U.S.C. § 1446(c)(2), where a case is removed based on diversity jurisdiction, “the sum demanded in good faith in the initial pleading shall be the amount in controversy ...”. Plaintiffs expressly pleaded that their damages “exceed \$75,000, exclusive of interest and costs.” Petition, ¶ 17.

REMOVAL IS PROPER

14.

Defendant, Wendelta Property Holdings LLC, was served with the Petition for Damages on April 25, 2019. *See* Proof of Service, attached hereto as Exhibit “B”.

15.

Defendant, Liberty Mutual Insurance Company, was served with the Petition for Damages on April 25, 2019. *See id.*

16.

Accordingly, this Notice is timely filed within thirty days after the first service or notice on any defendant of the pleadings setting forth the claims for relief and it is filed within one year of the filing of the Petition for Damages in compliance with 28 U.S.C. § 1446(b).

17.

The United States District Court for the Western District of Louisiana, Monroe Division, is the federal judicial district embracing the Fourth Judicial District Court for the Parish of Ouachita, where the suit was originally filed. Thus, venue is proper in this Court under 28 U.S.C. § 1441(a).

18.

This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a). Removal of this action to this Court is proper pursuant to 28 U.S.C. § 1441.

19.

Promptly after the filing of this Notice of Removal to the United States District Court for the Western District of Louisiana, a copy of this Notice will be filed with the Clerk of the Fourth Judicial District Court for the Parish of Ouachita, State of Louisiana, to effect the removal of this action to this Court, as provided by law.

WHEREFORE, the above premises considered, Defendants, Wendelta Property Holdings LLC and Liberty Mutual Insurance Company, pray that Civil Action No. 19-1127, currently pending in the Fourth Judicial District Court for the Parish of Ouachita, State of Louisiana, be removed to this Court for trial and determination; that all further proceedings in the State Court be stayed; and that these Defendant have all additional and further relief to which they may be entitled.

Respectfully submitted,

**DUPLASS, ZWAIN, BOURGEOIS, PFISTER,
WEINSTOCK & BOGART, APLC**

/s/ John G. Yadamec

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of May 2019, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all known counsel of record by operation of the Court's electronic filing system.

/s/ John G. Yadamec

JOHN G. YADAMEC